Petition

81-386
NO. _____

FILED
AUG 28 1981
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

LINDA JOHNSON,
Petitioner,

v.

SWEETWATER CARPET CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the Tennessee Court of Appeals, Eastern Section, at Knoxville No. C.A. 39

PETITION FOR WRIT OF CERTIORARI

FRANK VERNON WILLIAMS, III
Post Office Box 850
Kingston, Tennessee 37763
Telephone: (615) 376-9100

Attorney for Petitioner

TENNESSEE LAW PRINTERS, P. O. Box 277, Knoxville, Tennessee, Phone 525-4202

8-20-81-52

QUESTION PRESENTED FOR REVIEW

Is the due process provision of the Fourteenth Amendment to the United States Constitution violated by State Court action pursuant to the Uniform Commercial Code, Bulk Transfers provisions contained in Tennessee Code Annotated § 47-6-101, et seq., which permit a judgment creditor to levy execution upon property in the hands of a buyer in bulk from the judgment debtor without naming the buyer of such property as a party defendant in such court action and affording the buyer reasonable notice and an opportunity to be heard?

PARTIES TO THIS CAUSE OF ACTION

The only parties interested herein are those which appear in the caption.

However, this petition for Writ of Certiorari draws into question the constitutionality of a State statute. 28 U.S.C. § 2403(b) may be applicable and a copy hereof shall be served upon the Tennessee Attorney General pursuant to Rule 28.4(c) of this Court with appropriate certification.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THIS CAUSE OF ACTION	i
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL PROVISIONS, STATUTES AND OFFICIAL COMMENTS	2
STATEMENT OF THE CASE	5
REASONS FOR GRANTING WRIT	7
APPENDIX—	
Opinion – Tennessee Court of Appeals	A-1
Order – Tennessee Supreme Court	A-7
Judgment – Roane County, Tennessee Chancery Court	A-8
Exhibit 1 to Judgment – Court's Findings	A-10
Complaint	A-17
Order Sustaining General Creditor's Bill and Appointing Receiver	A-21
Intervening Petition	A-24
Answer to Intervening Petition	A-28

TABLE OF AUTHORITIES

Table of Cases Cited:

Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 865 (1972)	8, 10, 11-12
Mitchell v. W. T. Grant Co., 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974)	8, 10
Mullane v. Central Hanover Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950)	8

North Georgia Finishing, Inc. v. Di-Chem, Inc.,
419 U.S. 601, 95 S.Ct. 719,
42 L.Ed.2d 751 (1975) 8

Statutes and Regulations Cited:

T.C.A. §47-6-101, et seq. i

T.C.A. §47-6-104(1)(a), (b), and (c) 2, 7

T.C.A. §47-6-104, Comments to Official
Text (2) 3

T.C.A. §47-6-105 3

T.C.A. §47-6-111, Comments to Official Text . . . 4

28 U.S.C. §2403(b) i

28 U.S.C. §1257(3) 2

U. S. Constitution – Amendment 14 – §1 4

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

LINDA JOHNSON,
Petitioner,

v.

SWEETWATER CARPET CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the Tennessee Court of Appeals, Eastern Section, at Knoxville
No. C.A. 39

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Linda Johnson, prays that a Writ of Certiorari issue to review the opinion of the Tennessee Court of Appeals entered May 19, 1981. Application for permission to appeal to the Tennessee Supreme Court was denied by order entered July 13, 1981.

OPINIONS BELOW

The opinion of the Tennessee Court of Appeals is unreported and appears in the Appendix, *infra* p. A-1.

The order of the Tennessee Supreme Court denying review of the Court of Appeal's decision is likewise unreported and appears in the Appendix, *infra* p. A-7.

The judgment of the Roane County Chancery Court appears in the Appendix, *infra* p. A-8.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3) to review a decision of the Tennessee Court of Appeals, Eastern Section, entered May 19, 1981. Application for permission to appeal to the Tennessee Supreme Court was denied July 13, 1981, vesting this Court with jurisdiction to review the decision of the lower appellate court in which the case remains docketed.

CONSTITUTIONAL PROVISIONS, STATUTES AND OFFICIAL COMMENTS

Tennessee Code Annotated

§47-6-104. Schedule of property, list of creditors. - (1) Except provided with respect to auction sales (§47-6-108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six (6) months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the register's office of the county wherein the transferor maintained his or its principal place of business in this state.

Comments to Official Text, T.C.A. §47-6-104

(2) Except for the accuracy of the list of creditors, the sanction for noncompliance with the present section is that the transfer is ineffective against creditors of the transferor. The creditors referred to are those holding claims based on transactions or events occurring before the transfer (Section 6-109). Any such creditor or creditors may therefore disregard the transfer and levy on the goods as still belonging to the transferor, or a receiver representing them can take them by whatever procedure the local law provides. But it follows also that if the debts of the transferor are paid as they mature disregard of the requirements of the section creates no liability. And a defect can always be cured by paying off the unpaid creditors.

T.C.A. §47-6-105. Notice to creditors. - In addition to the requirements of the preceding section, any bulk transfer subject to this chapter except one made by auction sale (§47-6-108) is ineffective against any creditor of the transferor unless at least ten (10) days before he takes possession of the goods or pays for them, whichever

happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (§47-6-107). [Acts 1963, ch. 81, §1 (60105).]

Comments to Official Text, T.C.A. §47-6-111

(2) The main sanction for noncompliance with the Article [Chapter] is that the transfer "is ineffective against any creditor of the transferor." Sections 6-104, 6-105. This means, e.g., that a judgment creditor of the transferor may levy execution on the property. See Comment 2 to Section 6-104.

In such a case, which may be expected to be frequent, no "action under this Article [Chapter]" will be necessary. The action will have been brought and prosecuted to judgment on whatever the claim was. The only thing done "under this Article [Chapter]" will be the levy and resulting sale.

The short statute of limitations is therefore made applicable to levies as well as actions. "Levy," which is not a defined term in the Code, should be read broadly as including not only levies of execution proper but also attachment, garnishment, trustee, process, receivership, or whatever proceeding, under the state's practice, is used to apply a debtor's property to payment of his debts.

United States Constitution - Amendment 14

§1. Citizenship - Due Process of Law - Equal Protection . . . .; nor shall any state deprive any person of life, liberty, or property, without due process of law; . . . .

STATEMENT OF THE CASE

On May 9, 1979, the respondent, Sweetwater Carpet Corporation (Sweetwater), obtained a judgment in the General Sessions Court for Roane County, Tennessee, against Richard Branaum for Three Thousand, One Hundred Thirty and 43/100 Dollars ($3,130.43) for past debts incurred by Branaum in the operation of Four Seasons Carpet. On July 11, 1979, Sweetwater filed a general creditor's complaint (Appendix, *infra* p. A-17) in the Chancery Court for Roane County, Tennessee, against Branaum seeking to enforce its judgment. On October 26, 1979, Sweetwater obtained a Court Order appointing a receiver to marshal Branaum's assets. The receiver, a law officer and Sweetwater's attorney entered Four Seasons Carpets on November 2, 1979, took possession of the assets and locked the doors.

On November 15, 1979, the petitioner, Linda Johnson (Johnson), filed an intervening petition (Appendix, *infra* p. A-24) in the Chancery Court suit and alleged, in part, that she had purchased and had taken possession of the assets of Four Seasons Carpets from her brother, Branaum, effective January 1, 1979; that the receiver and law officer had entered the business, evicted her and had deprived her of the assets; and that this had been accomplished without providing her with Fourteenth Amendment due process.

The issues joined between Johnson and Sweetwater in the intervening petition were tried by the Roane County Chancery Court on September 29, 1980, at which time the Court dismissed the intervening petition and ordered the receiver to take possession and control of the assets of Four Seasons Carpets in the hands of the petitioner, Johnson, and to hold and manage such assets for the use and

benefit of Branaum's creditors. None of the other collateral actions by and between the creditors and the debtor, Branaum, were tried by the Court and those matters are not now at issue in this appeal.

The actual date on which Sweetwater learned of the transfer was disputed at trial, but Sweetwater stipulated at trial that it had actual notice of the transfer from Branaum to Johnson on March 27, 1979, some 3-1/2 months prior to filing the general creditor's complaint against Branaum.

At trial, Johnson admitted that she did not comply with the notice requirements of the Bulk Sales Act. Further, the pleadings reflect that Johnson was not named a party defendant in the general creditor's complaint, nor was mention made in the complaint of Johnson or the prior transfer. Furthermore, she was never served with any process in the case prior to the date that the business was closed on November 2, 1979, but did have actual knowledge of the suit against Branaum.

From the adverse judgment of the Roane County Chancery Court, Johnson appealed. The Tennessee Court of Appeals, speaking through Judge Herschel D. Franks, Jr., delivered a five-page opinion on May 19, 1981, affirming the trial court's decision and specifically held that Johnson had not been deprived of procedural due process, saying:

> Finally, Johnson argues she was denied due process of law by the failure of the creditor to name her as a party defendant in the general creditors' bill. Certainly, better practice would dictate the naming of all known parties claiming an interest in the assets of the debtor; however, the Act authorizes the creditor to proceed against the assets

> where the Act has not been complied with, i.e., the assets are regarded as still belonging to the debtor. This procedure does not deny the transferee due process rights, since anyone claiming an interest in the assets of the debtor may intervene, T.C.A., §29-12-103; Tennessee Rules of Civil Procedure, §24; and *Gibson's Suits in Chancery*, *supra*. Moreover, Johnson had actual notice of the filing of the general creditors' bill at the time the defendant, Branaum, was served with process. This issue is without merit.
>
> (Appendix, *infra* p. A-5)

Johnson applied to the Tennessee Supreme Court for permission to appeal, but her application was denied by order entered on July 13, 1981, with concurrence in the result only. (Appendix, *infra* p. A-7)

No petition for rehearing was filed with the Tennessee Supreme Court.

REASONS FOR GRANTING WRIT

The Bulk Sales Provisions of the Uniform Commercial Code are designed to protect creditors by rendering the bulk sale of the debtor's assets ineffective as to such creditors unless certain notice provisions are followed. Consequently, creditors can, without notice, levy execution under Tennessee law upon the assets in the hands of the buyer in bulk who does not provide the requisite notice. T.C.A. §47-6-104.

The petitioner, who bought property in bulk from a debtor without giving such notices, respectfully submits that the seizure of her property without being given notice and an opportunity to be heard is violative of the due

process provisions of the Fourteenth Amendment to the United States Constitution.

It is essential to provide adequate notice of actions designed to affect a person's legally protected interests, and such notice must be reasonably calculated to afford such persons an opportunity to present their objection to such action. *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

The decision of the Tennessee Court in the instant case is contrary to procedural due process standards adopted by this Honorable Court in previous decisions, principally those of *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), and its progeny.

When tested by *Fuentes* and the subsequent decisions of *Mitchell v. W. T. Grant Co.*, 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974), and *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 42 L.Ed.2d 751, 95 S.Ct. 719 (1975), the seizure of the petitioner's property will be found to be arbitrary and unreasonable and violative of the Fourteenth Amendment.

It should be noticed that the respondent, Sweetwater, claimed no title, legal or equitable, in the assets held by the petitioner. There was no assertion by Sweetwater that any of these assets had been purchased by the debtor, Branaum, from Sweetwater or that Sweetwater held any contractual security instrument similar to that in *Mitchell v. W. T. Grant Co., supra*. Nor was this procedure employed for the protection of the property. Likewise, no procedure is established in the Bulk Sales provisions to accommodate the constitutionally protected interests of the parties as in the *Mitchell* case.

Indeed, Sweetwater was only a judgment creditor entitled by State law to execute upon property in the hands

of the petitioner. The right of the respondent to execute upon the petitioner's property pursuant to the Bulk Sales provisions of the Uniform Commercial Code is not questioned. But to do so without adequate procedural safeguards renders the resulting execution constitutionally deficient. At the very least the petitioner should have been named a party defendant in the general creditor's complaint, served with notice, and given an opportunity to present available defenses.

The petitioner strongly but respectfully asserts that the procedure followed by the respondent in this case could have been employed even against a buyer who had fully complied with the Bulk Sales provisions. If no advance notice or hearing is required, what would prevent a judgment creditor from summarily executing upon property in which the creditor's interests were not protected by law? Furthermore, no subsequent hearing is prescribed by statute as in *Mitchell* which would require the respondent to prove that it is entitled to execute upon such property.

The intent of the respondent was to summarily deprive the petitioner of her property. There was no pretense that the respondent intended only to seize this property until the respective interests could be judicially determined, even if that were proper. But the respondent intended and set about to separate the petitioner and her property with finality — to liquidate the assets and apply the proceeds toward payment of its judgment. There is no question that this procedure is in keeping with the letter and intent of the Bulk Sales provisions, but it does run afoul of the Fourteenth Amendment. There is great danger here that the seizure may be mistaken or carried out against individuals with valid defenses in view of the fact that it is the creditor and not the court who determines the procedure and the property to be seized.

It is true, as the Tennessee Court of Appeals noted, that the buyer could intervene in the general creditor's action. But the Supreme Court has previously repudiated this argument:

> If the right to notice and a hearing is to serve its full purpose, then it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. "This Court has not . . . embraced the general proposition that a wrong may be done if it can be undone."
>
> *Fuentes v. Shevin*, 407 U.S. 67, 81, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972)

The petitioner does not take the position that there is one, and only one, constitutionally acceptable procedure for handling such matters, nor does she contend that only advance notice and hearing will suffice for constitutional purposes in every case. The petitioner understands that the *Mitchell* decision indicates that advance notice and hearing is not absolutely essential in every case and that State legislatures may adopt procedures which are constitutionally acceptable and which protect the respective interests of the parties. But the statutes involved here specify no alternative procedure for safeguarding the petitioner's interests, and the fact remains that the procedure followed did not afford her the basic protection

guaranteed by the Constitution. Accordingly, this was an arbitrary and unreasonable taking as spoken of in *Fuentes* and the only proper procedure would have been to name the petitioner as a party defendant in the general creditors complaint.

Furthermore, the Tennessee Court employed a legal "fiction" to avoid Constitutional problems. The assets, said the Court of Appeals, "are regarded as still belonging to the debtor." Such fictions should not be condoned, especially where they are employed to circumvent a basic right protected by the Constitution. Although the petitioner's interests may be subordinate to those of the respondent under state law, she, nevertheless, has property rights as against the rest of the world and potential defenses available against the respondent. Those property rights, such as they are, entitle her to the fundamental procedural safeguards afforded by the Constitution. This issue was also addressed by the Court in *Fuentes*:

> The right to a prior hearing, of course, attaches only to the deprivation of an interest encompassed within the Fourteenth Amendment's protection. In the present cases, the Florida and Pennsylvania statutes were applied to replevy chattels in the appellants' possession. The replevin was not cast as a final judgment; most, if not all, of the appellants lacked full title to the chattels; and their claim even to continued possession was a matter in dispute, moreover, the chattels at stake were nothing more than an assortment of household goods. Nonetheless, it is clear that the appellants were deprived of possessory interests in those chattels that were within the protection of the Fourteenth Amendment.

Fuentes v. Shevin, 407 U.S. 67, 84, 92 S.Ct. 1983, 1996, 32 L.Ed.2d 556 (1972).

Finally, the Tennessee Court of Appeals said: "Moreover, Johnson had actual notice of the filing of the general creditor's bill at the time the defendant, Branaum, was served with process." This statement by the Court is true, but is of no valid significance insofar as the petitioner is concerned. The complaint appears in the Appendix, *infra* p. A-17. There is absolutely no mention of the petitioner or the prior transfer anywhere in the complaint in spite of the fact that the respondent stipulated at trial that it had actual notice of the transfer some 3-1/2 months prior to filing the complaint. In short, there was nothing in the general creditor's complaint to indicate to the petitioner that her interests were in jeopardy and that she was required to defend herself against the respondent.

What possible excuse could the respondent have for not naming the petitioner in the general creditor's complaint when it knew of her claimed interest in the property? Could it be that the respondent found it to be quicker and more convenient to dispense with such "due process" if permitted to do so by the statute?

It was an understatement for the Tennessee Court of Appeals to say, "Certainly, better practice would dictate the naming of all parties claiming an interest in the assets of the debtor . . ." This is not simply a matter of "better practice" it is a Constitutional right.

The Tennessee Supreme Court, in denying the petitioner's application for permission to appeal, concurred only in the result reached by the Court of Appeals. By

implication the Tennessee Supreme Court disapproved the reasoning of the lower appellate court. The petitioner feels that the result reached in her case was also incorrect and was accomplished in violation of her Constitutionally protected right to procedural due process.

The outcome of this case will affect the procedural and substantive law in Tennessee and in the states which have adopted the Bulk Sales provisions of the Uniform Commercial Code. The petitioner's preliminary research indicates that most, if not all, of the States have statutory provisions substantially similar to those in Tennessee. The official comments to the Uniform Commercial Code, §47-6-111, also indicate that this type of situation "may be expected to be frequent." Consequently, the decision in the instant case will have a far reaching impact upon the present practice throughout the United States.

For the foregoing reason, the petitioner respectfully prays that Writ of Certiorari issue and that this Honorable Court consider the case upon its merits.

Respectfully submitted,

FRANK VERNON WILLIAMS, III
P. O. Box 850
Kingston, Tennessee 37763
Telephone: (615) 376-9100

Attorney for Petitioner

Appendix

[Filed May 19, 1981]

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

LINDA JOHNSON,	)	Roane County Chancery.
	)	
VS.	)	Honorable Billy Joe White,
	)	Chancellor.
SWEETWATER CARPET	)	
CORPORATION,	)	AFFIRMED AND
	)	REMANDED.

FRANK V. WILLIAMS, III, Kingston, for intervenor-appellant.

RON CUNNINGHAM, Finkelstein, Kern, Steinberg & Cunningham, Knoxville, for plaintiff-appellee.

OPINION

Franks, J.

Linda Johnson appeals the chancellor's dismissal of her intervening petition in a general creditors' action filed by Sweetwater Carpet Corporation against her brother, Richard L. Branaum, d/b/a Four Seasons Carpet & Decorating.

After the action had been sustained as a general creditors' bill and a receiver took charge of the assets, Johnson filed her intervening petition alleging she had purchased all the fixtures, inventory and accounts receivable of the business

for a valuable consideration from her brother and had operated the business until she was evicted by law enforcement officers, pursuant to the direction of the court's receiver. She alleged she had been deprived of her property

[2]

without due process of law and while admitting she did not comply with the Bulk Sales Law by giving the required notices, the Sweetwater Carpet Corporation knew of the change in ownership more than six months prior to the action of the receiver in taking possession of the property, which action was barred by T.C.A., §47-6-111. Sweetwater Carpet Corporation answered, denying knowledge of any sale until the business was closed by the receiver and charged Branaum and Johnson were operating the business as a partnership; further, that the transaction was concealed and was void as to creditors of Branaum.

The cause came on for an evidentiary hearing and, after Linda Johnson had testified in chief and during cross-examination, the chancellor interrupted the evidentiary proceeding and ruled as a matter of law that Johnson's testimony did not take the transaction out of the Bulk Sales Act and, after a colloquy between the court and the attorneys, the attorneys stipulated that Sweetwater Carpet Corporation received notice on March 27, 1979, of the transfer. The chancellor further ruled as a matter of law that, since the complaint in the general creditors' action was filed on July 11, 1979, T.C.A., § 47-6-111 did not bar the carpet company's claim to the assets and dismissed the intervening petition.

While the chancellor, subsequent to his pronouncements, offered to permit the parties to proffer additional evidence, we view with disfavor the procedure followed in this case.

However, on appeal, neither party questions the actions of the trial court.[1]

---

[1] On appeal, appellee insists the Uniform Fraudulent Conveyance Act, T.C.A., § 64-301, et seq., is applicable to this case, citing the findings of fact made by the chancellor; however, in the abbreviated trial, no mention is made of these statutes or this theory.

[3]

Appellant Johnson raises two questions of law, i.e., whether the six months' statute of limitations barred recovery of the personal property in possession of the intervenor and whether the Sweetwater Carpet Corporation complied with procedural due process requirements in proceeding against Branaum without joining the intervenor as a party defendant.

The chancellor, in effect, found the sales agreement was concealed until March 27, 1979. The evidence does not preponderate against this determination, especially since the court gave little weight to Johnson's testimony. The record establishes the sales agreement between Johnson and Branaum, though dated January 1, 1979, was not executed and notarized until March 27, 1979; Branaum continued to work at and for the business while retaining certain accounts receivable and was authorized to write checks on the business's bank account after the January 1 date. Johnson's signature was not authorized on the business account until April 2, 1979, and the tax account number of Branaum was utilized until October of 1979, and the income for the business through October, 1979 was reported on Branaum's income tax return. The evidence preponderates in favor of concealment of the transfer until the stipulated date of notice of March 27, 1979.

The issue thus becomes whether the filing of the general creditors' bill on July 11, 1979 is an action to toll the six months' statute of limitations within the meaning of T.C.A., § 47-6-111. The intervenor argues that "action" and "levy" mentioned in the statute are not actions or levies against the seller, but are actions or levies against the buyer of the property. We cannot agree.

The intervenor, in effect, concedes in the petition

[4]

and by her testimony that since the notice requirement of the statute was not met, the bulk transfer was ineffective against any creditor of her brother. T.C.A., § 47-6-105. T.C.A., § 47-6-104, comment 2, indicates that where there is non-compliance with the Bulk Transfer Act, the remedies of the creditors of the transferor against the assets are preserved. White and Summers, in their work *Uniform Commercial Code*, ch. 19, § 19-4 (1st ed., 1973), at page 654, in discussing this comment, state:

> [A]ccording to Comment 2 to 6-104, the transferor's creditors may "disregard the transfer and levy on the goods as still belonging to the transferor, or a receiver representing them [the creditors] can take them by whatever procedure the local law provides." . . . In sum a totally noncomplying transfer will be ineffective in the sense that transferred assets will still be regarded as belonging to the transferor.
>
> At 654-5.

T.C.A., § 47-6-111, Comment 2, states:

> "Levy," which is not a defined term in the Code, should be read broadly as including not only levies of execution proper but also attachment, garnish-

ment, trustee process, receivership, or whatever proceeding, under the state's practice, is used to apply a debtor's property to the payment of his debts.

Under this state's practice, a general creditors' bill has long been used to apply a debtor's property to the payment of his debts. See T.C.A., §29-12-101, et seq.; *Gibson's Suits in Chancery*, vol. 2, § 1077 et seq., (5th ed., 1956). The action or levy brought in cases of non-compliance with the Bulk Sales Law relates to the debtor and his property, and upon non-compliance the creditor may proceed against the debtor's assets since, upon non-compliance with the Act, the assets are still regarded as belonging to the transferor or debtor. We conclude the filing of the general creditors' bill was an action

[5]

or levy brought within six months of the discovery of the concealed transfer.

Finally, Johnson argues she was denied due process of law by the failure of the creditor to name her as a party defendant in the general creditors' bill. Certainly, better practice would dictate the naming of all known parties claiming an interest in the assets of the debtor; however, the Act authorizes the creditor to proceed against the assets where the Act has not been complied with, i.e., the assets are regarded as still belonging to the debtor. This procedure does not deny the transferee due process rights, since anyone claiming an interest in the assets of the debtor may intervene. T.C.A., § 29-12-103; Tennessee Rules of Civil Procedure, § 24; and *Gibson's Suits in Chancery*, *supra*. Moreover, Johnson had actual notice of the filing of the general creditors'

bill at the time the defendant Branaum was served with process. This issue is without merit.

The issues raised on appeal are resolved against the intervenor and costs incident to the appeal are assessed against Linda Johnson. The order dismissing the intervenor is affirmed and the cause remanded to the trial court.

/s/ HERSCHEL P. FRANKS, J.
Herschel P. Franks, J.

CONCUR:

/s/ JAMES W. PARROTT
James W. Parrott, P.J.

/s/ CLIFFORD E. SANDERS, J.
Clifford E. Sanders, J.

[Filed July 13, 1981]

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

LINDA JOHNSON, Appellant,	)	
VS.	)	ROANE EQUITY
SWEETWATER CARPET CORPORATION, Appellee.	)	

ORDER

Upon consideration of the application for permission to appeal and the answer thereto, the briefs of counsel and the entire record, the Court is of the opinion that the application should be denied, with concurrence in the result only.

PER CURIAM

[Filed December 18, 1980]

IN THE CHANCERY COURT
FOR ROANE COUNTY, TENNESSEE

SWEETWATER CARPET CORPORATION

Versus

RICHARD BRANAUM

No. 9907

LINDA JOHNSON, INTERVENING PETITIONER

Versus

SWEETWATER CARPET CORPORATION

JUDGMENT

This cause came on to be heard on the 29th day of September, 1980 before the Honorable Billy Joe White, holding the Chancery Court for Roane County, Tennessee upon the complaint of Sweetwater Carpet Corporation, the intervening petition of Linda Johnson, the answer of the Sweetwater Carpet Corporation, the testimony of witnesses in open Court, the argument of counsel and upon the entire record in this cause, from all of which the Court finds the facts in this case to be as set out in the transcript, which is attached as exhibit hereto, and to which reference is here made for full particulars.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that the intervening petition of Linda Johnson

be, and is hereby, dismissed; that the receiver heretofore appointed by the Court take possession and control of any and all assets of Four Seasons Carpet and Decorating in the hands of the said Linda Johnson and hold and manage said assets for the use and benefit of the creditors of the defendant, Richard Branaum, d/b/a Four Seasons Carpet and Decorating, pursuant to the further orders of the Court.

To which action of the Court Linda Johnson excepted and prayed an appeal, which is hereby granted upon giving proper notice and otherwise complying with the law. The petitioner shall have ninety (90) days in which to file the transcript of the

[2]

proceedings.

This 18 day of Dec. , 1980.

/s/ B. J. WHITE
Chancellor

APPROVED FOR ENTRY:

/s/ RON CUNNINGHAM, By TW
Attorney for Plaintiff,
Sweetwater Carpet Corporation

/s/ FRANK V. WILLIAMS, III
Attorney for Petitioner,
Linda Johnson.

Exhibit 1 to Judgment

[Entered December 22, 1980]

IN THE CHANCERY COURT
OF ROANE COUNTY, TENNESSEE
AT KINGSTON

SWEETWATER CARPET CORPORATION, INC.,	)	
Plaintiff,	)	
vs.	)	No. 9907
LINDA JOHNSON, d/b/a FOUR SEASONS CARPET & DECORATING,	)	
Defendant.	)	

TRANSCRIPT
OF
THE COURT'S FINDINGS

APPEARANCES:

For the Plaintiff: Mr. Frank V. Williams, III
Attorney at Law
155-1/2 Race Street
Kingston, Tennessee 37763

For the Defendant: Mr. Ron Cunningham
Attorney at Law
Suite 500
City and County Bank Building
Knoxville, Tennessee 37901

* * *

[2]

THE FOLLOWING IS A TRANSCRIPT OF THE FINDINGS OF THE COURT, ON SEPTEMBER 29, 1980, WHEN THE ABOVE-CAPTIONED CAUSE CAME ON TO BE HEARD IN THE CHANCERY COURT OF ROANE COUNTY, AT KINGSTON, TENNESSEE, BEFORE THE HONORABLE BILLY JOE WHITE, CHANCELLOR.

THE COURT: Gentlemen, in my opinion, on the proof before me up to this point, it is certainly not such a transfer that would take this matter out of the bulk sales.

And for various and sundry reasons -- actually many reasons -- the situation being where Mrs. Johnson purchased for ten thousand dollars the business, with assets worth far more than that; a transfer from brother to sister; a transfer to Mrs. Johnson, who had been employed as a bookkeeper and had knowledge, actual knowledge, of these accounts being owed; entered into this agreement, knowing that there were accounts owing against this carpet and stock -- purchased for ten thousand dollars.

The money was borrowed from her brother's wife, who made loans to her; and that Mr. Branaum was repaid, mostly, or to a great extent, through those very loans; not figuring Federal income tax on any of the proceeds until October is something, certainly that I would consider.

The fact that Mr. Branaum wrote checks; worked in the store; made contracts; the fact that as late -- one of

[3]

the exhibits, one, or both of them on the boat -- that check was written by Mr. Branaum for a boat he was obviously purchasing for himself.

But wherever the money was supposed to come from, that's directly contrary to the injunction issued in this matter. Mr. Branaum is probably in contempt of Court for writing that check. The injunction was issued and served July 11, ordering no checks or assets to be dissipated to Mr. Branaum thereafter. And I'm sure that check was written after that time.

Gentlemen, one or many theories -- this is not such a case that a bonafide transfer with open possession is here that would take it out of bulk sales. This is an in-house transfer. And, if necessary, more suggestive terms could be used by the Court as to what it was. But, unless there is a particular requirement for that, I don't know of any need to go into it.

As a result of this, I'm not going to absolutely cut you off from trying your lawsuit, but I am going to tell you now that unless you come with something that I can't see now, you can't win.

MR. WILLIAMS: Your Honor, I have stated to the Court what our proof would amount to today, and that's simply corroboration from the others. I do not know --

THE COURT: Let me make this statement for you.

[4]

I will require Mr. Neal and the other witness to come in and testify. If they should testify that Mrs. Johnson ad-

vised them early in 1979 that she had purchased this, and held it out to be hers, and so forth, that's a defense -- that's a valid defense that you could rely on.

And if you have any thought that they might actually testify to this, contrary to what their counsel says, I'll let them come in and testify.

MR. WILLIAMS: Well, I believe that we would show that Mr. Austin, at least in late March, or early April, was advised of that by one, or the other, of the parties -- that the business had been sold. And he was their law firm.

MR. CUNNINGHAM: Your Honor, the Receivership was filed within four months.

THE COURT: That's going to be within the six months. Whatever time the knowledge came to these people -- your six months runs from that time. If that's the earliest you can show, it won't be good enough.

MR. WILLIAMS: Our position would be, in so far as Mrs. Johnson is concerned, that she was not a party to that lawsuit and did not actually have her business closed until November of 1979, which was more than six months after the notice was given to the clerk.

MR. CUNNINGHAM: Your Honor, under the Bulk Sales Law, you can go out against a person in violation of bulk

[5]

sales. And I think the statute -- the date the receivership was filed -- that's one way.

I think, also, that even outside of the bulk sales transfer, as a matter of law, this involves a transfer without fair consideration, and that would automatically make it void.

THE COURT: I think you get into a very close situation of partnership and joint venture where your client might be liable for debts, but I don't need to go into that. But if you want the defendants, the original defendants, to put that proof on, I'll be glad, after lunch, to hear it.

MR. WILLIAMS: What?

THE COURT: Do you want to have him to put his proof on on those issues as to whether or not that information was relayed by your client to them, and at what time?

MR. WILLIAMS: Well, it doesn't really matter to me. Perhaps Mr. Cunningham would simply like to stipulate that Mr. Austin would concede that he did receive notice on March 27th -- is that the day?

MR. CUNNINGHAM: The same day that the agreement was signed. We can also stipulate that we have a letter that we wrote one of our clients that we came to her store on March 27th to talk with her. So that's extremely clear on the date. And, also, that coincides with the date the agreement was signed.

[6]

MR. WILLIAMS: Well, your Honor, that would be the only point that, if they want to stipulate that, that would be the only other issue that I would know of that I'd want to get into. And rather than get up here and cross-examine them, and have them go into more detail, I think that's the only single point that would remain in issue.

THE COURT: But I would doubt that Mrs. Johnson, buying with full knowledge of these accounts and debts, entering into the contract in the way and manner in which it was, that under any circumstances she could take herself outside the Bulk Sales Law. Because she knowingly entered into this agreement.

I'm not saying by that that she knew all the provisions of the Bulk Sales Law, because not many people do. But I doubt seriously, under any circumstance, that she could take herself outside the requirements of complying.

MR. WILLIAMS: For the purpose of the record, then, about the only purpose that I could see for going into it any further would be the sole fact as to when the plaintiffs, through their attorneys, were made aware of the claim, would be the March 27th date on which Mr. John Austin was allegedly told this by one or the other of these parties here.

And if that's the only issue, if it's satisfactory, we can stipulate that.

MR. CUNNINGHAM: Well, that's what our proof will

[7]

show, so we can stipulate that.

THE COURT: Well, the contract that was entered into, between the parties, was dated on that same day.

MR. CUNNINGHAM: Thank you, your Honor.

MR. WILLIAMS: Could I have a moment to talk to my clients?

THE COURT: I'll take a recess before going to lunch. In the event we need to come back and hear proof, just let me know.

THE ABOVE IS A RECORD OF THE COURT'S FINDINGS IN THE ABOVE-STYLED CAUSE, WHEN THE SAME CAME ON TO BE HEARD ON THE 29th DAY OF SEPTEMBER, 1980, IN THE CHANCERY COURT OF ROANE COUNTY, TENNESSEE, AT KINGSTON, BEFORE THE HONORABLE BILLY JOE WHITE, CHANCELLOR.

[8]

REPORTER'S CERTIFICATE

I, ROSE HARDING, Court Reporter and Notary Public at Large for the State of Tennessee, do hereby certify that this is a true and accurate record of the findings of the Court, given on the 29th day of September, 1980, in the above-captioned cause in the Chancery Court of Roane County, Tennessee, when the same come on for hearing before the Honorable Billy Joe White, Chancellor of said Court.

/s/ ROSE HARDING
Rose Harding
Notary Public at Large
State of Tennessee
My Commission expires: 1-22-84.

[Filed July 11, 1979]

IN THE CHANCERY COURT
FOR ROANE COUNTY, TENNESSEE

SWEETWATER CARPET CORPORATION, a Delaware corporation with place of business in Ringgold, Georgia, Plaintiff	CIVIL ACTION
Vs.	NO. 9907
RICHARD BRANAUM d/b/a FOUR SEASONS CARPET & DECORATING, Midtown, Tennessee, Defendant	

COMPLAINT

Comes the Plaintiff, by and through counsel, and would show to the Court as follows:

1. That the names and addresses of the parties are shown in the caption of this cause.

2. Plaintiff avers that it is a bona fide judgment creditor of the Defendant and that it received judgment against the Defendant for Three Thousand One Hundred Thirty Dollars and Forty-three Cents ($3,130.43) in the General Sessions Court for Roane County on May 9, 1979, Civil Action No. 20490. No payments have been made on the judgment.

3. Plaintiff is further advised that Defendant is largely indebted to various other creditors and Plaintiff is informed and believes, and on that belief charges and avers, that his assets do not equal his liabilities.

4. The Plaintiff further believes that other creditors are in the process of obtaining judgment and seeking to attach various assets of the Defendant.

[2]

5. The personal assets of the Defendant consist of accounts receivable, equipment, personal property, and other properties which are unknown to your Plaintiff, and your Plaintiff would show that the various creditors which are proceeding towards judgment in an effort to attach those assets will receive preference over other creditors of the Defendant if they are allowed to do so.

6. Plaintiff avers that Defendant originally did business in Knox County, moved to Loudon County, and then set up business in Roane County as he was pursued by his creditors. Plaintiff fears that the Defendant will leave the jurisdiction of this Court if the Court fails to take immediate action. Plaintiff therefore avers that to protect your Plaintiff and other creditors the Court should appoint a Receiver for the purpose of taking charge of the assets of the Defendant immediately upon the filing of this Complaint, and also that the Court should restrain the Defendant from disposing of any of his assets pending further proceedings herein.

7. Plaintiff avers on its information and belief that other creditors are threatening to bring suit and file executions and liens against the Defendant's assets and therefore avers that his assets are in great danger of being consumed by the cost of the multiplicity of suits.

PREMISED CONSIDERED, PLAINTIFF PRAYS:

1. That it be allowed to file this as a General Creditors' Bill on behalf of itself and all other creditors of the said Richard Branaum d/b/a Four Seasons Carpet & Decorating and that the Complaint be sustained as such.

2. That process issue requiring the Defendant to appear and answer this Complaint, but his oath to his answer is expressly waived.

[3]

3. That all bona fide creditors of the Defendant, Richard Branaum, be required to prosecute their claims and demands against said Defendant in this Court and in this cause, and to that end they be allowed to file their petitions exhibiting their respective claims and demands and to prove the same before the Receiver, and that the Receiver be directed to notify by due publication all creditors of the said Defendant to file their claims in this cause.

4. That all other creditors be enjoined from instituting any suit or suits against the Defendant, Richard Branaum, in any court or on any account, and further that they be enjoined from attaching any assets of Richard Branaum in any other judicial proceeding and that all creditors of Richard Branaum be required to prosecute their claims in this Court and in this cause.

5. That a Receiver be appointed to take into his possession all property of the Defendant of every sort, real, personal, or mixed, and that the said Receiver be empowered and directed to convert said property into money at the earliest practical moment, and that he be authorized and directed to bring all suits necessary to collect debts

due to the Defendant or to assert his rights or claims to any property and to do all other acts necessary to collect or protect the assets of the Defendant.

6. That the priority of claims of the various creditors herein be investigated and a report made thereof to this Court, that the Master be directed to take and state an account showing:

(a) the amount of the assets of the Defendant,

(b) the names of the preferred creditors, if any, and the amount due each and the particular asset to which each has a lien or superior equity,

(c) the names of the general creditors and the amount due each.

[4]

7. That the Defendant appear before this Honorable Court and show cause, if any exists, why a Receiver should not be appointed as demanded herein.

8. That a Restraining Order issue against the Defendant prohibiting him from removing any of his personal property or any assets of Four Seasons Carpet & Decorating from the jurisdiction of this Court, and further prohibiting him from disbursing any funds outside the ordinary course of business or removing any funds from his businesss, except for the purpose of placing them in a special trust fund set up for that purpose.

9. That the Plaintiff and other creditors of the Defendant have such further relief and general relief to which they may be entitled.

Order

This the 11 day of July , 1979.

SWEETWATER CARPET CORPORATION

BY: /s/ JOHN M. NEAL
John M. Neal, Attorney for Plaintiff
FINKLESTEIN, KERN, STEINBERG & CUNNINGHAM
P. O. Box 1
Knoxville, Tennessee 37901

[Entered October 26, 1979]

IN THE CHANCERY COURT
FOR ROANE COUNTY, TENNESSEE

SWEETWATER CARPET CORP., Plaintiff,	)	
vs.	)	Civil Action
RICHARD BRANAUM d/b/a FOUR SEASONS CARPET AND DECORATION, Defendant.	)	No. 9907

ORDER SUSTAINING GENERAL CREDITORS' BILL AND APPOINTING RECEIVER

This cause came on to be heard on the 12th day of September, 1979, upon the Plaintiff's motion to sustain the General

Creditors' Bill and to appoint a Receiver, at which time the Plaintiff's counsel was present and it appearing to the Court from the original Complaint in this cause, upon statements made by the Parties' attorneys and the entire record in this cause, that the Plaintiff's motion is well taken, it is,

ORDERED that the General Creditors' Bill be sustained and as such enure to the benefit of all creditors who may claim its benefits or come under it.

It is further ORDERED that the Clerk and Master make publication in some newspaper notifying all creditors of the Defendant, Richard Branaum, of filing of this Bill in this cause and requiring them to come in by petition and file and prove their respective claims against the Defendant on or before the 5th day of May, 1980, or they may be excluded the benefits of this proceeding.

It is further ORDERED that the institution of any separate suits by any of said creditors or claimants against the Defendant is hereby enjoined and all parties to any and all suits now pending against said Defendant are enjoined from proceeding further than to judgment, and the Master will so state in said publication.

It is further ORDERED that all creditors filing petitions in this cause will execute and file proper prosecution bonds or take the pauper oath in lieu thereof. Such petitions may be filed without other relief than this Order.

[2]

It is further ORDERED that after the time for filing of claims has expired, the Receiver to be appointed herein will state the account showing who are the bona fide creditors, the amounts of their respective debts and any liens

or priorities that may exist in favor of any of the creditors.

It is further ORDERED that Charles B. Hill, II, be appointed Receiver of Richard Branaum and that said Receiver is authorized to do all things necessary in his sole discretion to marshall the assets of Richard Branaum including but not limited to collecting his accounts receivable, inventorying the assets, employing such persons including attorneys and public accountants which in his sole discretion he deems desirable to facilitate and expedite the discharge of his duties as Receiver, and the Receiver shall hold said assets pending the further orders of this Court.

The Receiver is further directed to take over all bank accounts, all safety deposit boxes, and all monies on deposit in any bank, to seek to recover any income tax refunds or other monies due and owing Richard Branaum and to take charge and direction of any and all lawsuits pending on behalf of Richard Branaum.

It is further ORDERED that the Receiver shall post a bond in the amount of $10,000 .

Entered this 26 day of OCT , 1979.

/s/ B. J. WHITE
BILLY JOE WHITE, CHANCELLOR

APPROVED FOR ENTRY:

FINKELSTEIN, KERN, STEINBERG & CUNNINGHAM
612 Gay Street, Suite 500
P. O. Box 1
Knoxville, Tennessee 37901

/s/ J. M. NEAL
John Murray Neal
Attorney for Plaintiff

[Filed November 15, 1979]

IN THE CHANCERY COURT
FOR ROANE COUNTY, TENNESSEE

SWEETWATER CARPET CORPORATION	)	
	)	
Versus	)	
	)	
RICHARD BRANAUM d/b/a FOUR	)	
SEASONS CARPET & DECORATING	)	
		NO. 9907
LINDA JOHNSON	)	
Intervening Petitioner	)	
	)	
Versus	)	
	)	
SWEETWATER CARPET CORPORATION	)	

INTERVENING PETITION

Comes the petitioner, Linda Johnson, and sues the original plaintiff, Sweetwater Carpet Corporation, as follows:

1. Your petitioner would respectfully show to the Court that on the first day of January, 1979 she purchased from the original defendant, Richard Branaum, d/b/a Four Seasons Carpet & Decorating, all fixtures, inventory and accounts receivable situated at defendant's place of business in Midtown, Tennessee in consideration for the sum of Ten Thousand Dollars ($10,000). Said sale was subsequently evidenced by written memorandum, a copy of which is attached as exhibit "A" hereto and to which reference is here made for full particulars.

2. Your petitioner would respectfully show to the Court that she was advised by the original defendant, Richard Branaum, that he owed certain outstanding indebtedness which he had incurred during the course of the operation of his business and that it was expressly agreed upon between these parties that your petitioner would not be liable for any debts which the original defendant had incurred during the operation of his business. However, your petitioner was unaware and therefore,

[2]

failed to comply with the provision of the Uniform Commercial Code - Bulk Transfers - contained in T.C.A. 47-6-101 et seq., which provisions required of your petitioner that she give notice to the defendant's creditors of her purchase of the defendant's assets. Immediately after the sale and upon your petitioner having taken possession of said assets and the defendant's place of business, she discussed her purchase of the defendant's assets with the plaintiff's attorney and advised him at that time that she did not assume any of the defendant's indebtedness and would not be responsible therefor.

3. Upon information and belief, your petitioner avers that on or about the 24th day of October, 1979 an Order was issued in the above styled cause of action appointing a receiver for the defendant, Richard Branaum, and directing that receiver to marshall all of the assets of said defendant of every kind and description. Subsequent to the issuance of that Order, the plaintiff has, through its attorney, caused the Court-appointed receiver and Roane County law enforcement officers to enter her place of business, evicting her therefrom, and proceeding to deprive her of the inventory, fixtures, accounts receivable, and other assets located in Four Seasons Carpet building

in Midtown, Tennessee and thereby depriving her of her livelihood. Your petitioner further avers that the plaintiff has appropriated and converted the property of your petitioner to its own use and benefit without due process of law. Your petitioner avers that she did not receive any notice whatsoever that her place of business was about to be closed and her property confiscated. Your petitioner would further show to the Court that while she failed to comply with the Bulk Sales Provisions of the Uniform Commercial Code, she has, nevertheless, been in possession of the building, inventory, and fixtures of the Four Seasons Carpet's place of business for more than six (6) months next preceding the

[3]

plaintiff's levy upon your petitioner's property in violation of T.C.A. 47-6-111.

4. Wherefore, premises considered, your petitioner prays:

A. That an injunction issue to the plaintiff, Sweetwater Carpet Corporation, and the court-appointed receiver, Charles B. Hill, II, restraining them from occupying your petitioner's place of business in Midtown, Tennessee and requiring them to turn over to your petitioner all of the assets of said business immediately.

B. That your petitioner have and recover of the plaintiff, Sweetwater Carpet Corporation, the sum of Ten Thousand Dollars ($10,000) for damages arising out of the appropriation and conversion of your petitioner's property, lost income and damage to your petitioner's good will and business.

C. That upon a hearing of this cause, your petitioner

have such other, further and general relief to which she may be entitled.

/s/ LINDA JOHNSON
LINDA JOHNSON

/s/ FRANK V. WILLIAMS, III
FRANK V. WILLIAMS, III
ATTORNEY FOR PETITIONER

STATE OF TENNESSEE
COUNTY OF ROANE

LINDA JOHNSON, first being duly sworn, says upon her oath that she has read the foregoing Petition and the contents thereof are true to the best of her knowledge, information and belief.

/s/ LINDA JOHNSON
LINDA JOHNSON

Sworn to and subscribed before me,
this 13th day of November, 1979.

/s/ REBECCA T. STEELMAN
NOTARY PUBLIC
My Commission Expires: 12-21-80.

[Filed January 8, 1980]

IN THE CHANCERY COURT
FOR ROANE COUNTY, TENNESSEE

SWEETWATER CARPET CORPORATION	)	
VS.	)	
RICHARD BRANAUM	)	
	)	NO. 9907
LINDA JOHNSON, INTERVENING PETITIONER	)	
VS.	)	
SWEETWATER CARPET CORPORATION	)	

ANSWER TO INTERVENING PETITION

Comes Sweetwater Carpet Corporation, by and through its attorney, and answers the Intervening Petition of Linda Johnson as follows:

1. Plaintiff neither admits nor denies the allegations of paragraph 1, but denies strict proof thereof.

2. Plaintiff neither admits nor denies the existence of the communications alleged in paragraph 2 to have taken place between Petitioner and Defendant. Plaintiff would show the court that Petitioner and Defendant did not comply with the provisions of the bulk sales act, nor did either of them discuss this case with Plaintiff's attorney.

3. Plaintiff admits it obtained an order appointing a receiver to take over the assets of the Defendant Richard Branaum and that the business Four Seasons Carpet and Decorating was taken over by that receiver. However, due to Petitioner's failure to comply with the notice provisions of the bulk sales act, Plaintiff was not aware of any sale which may have occurred until the business was closed by the receiver.

4. All allegations of Petitioner not specifically admitted are now denied and Plaintiff demands strict proof thereof.

Now having fully answered Petitioner's Intervening Petition, Plaintiff would show the Court:

1. That Petitioner and the Defendant Richard Branaum were operating Four Seasons Carpet and Decorating as a partnership and that Petitioner is therefore jointly responsible for this debt.

[2]

2. That if Petitioner purchased Four Seasons Carpet and Decorating from the Defendant, the notice provisions of the bulk sales act were not complied with, the transaction was concealed, and the transfer is therefore void as to the creditors of Richard Branaum.

3. Petitioner is guilty of laches and has entered this action with unclean hands.

WHEREFORE, Plaintiff respectfully requests that Petitioner's Complaint be dismissed and that an Order be entered sustaining the creditors' bills against Linda Johnson under the same terms as those requested in the original Complaint.

SWEETWATER CARPET CORPORATION

BY: /s/ JOHN M. NEAL
John Murray Neal
Attorney for Plaintiff

[Certificate of Service Omitted]